

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 23, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP1638-CR

Cir. Ct. No. 2011CT253

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KEVIN J. O'CONNOR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sheboygan County: L. EDWARD STENGEL, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Kevin O'Connor appeals from his conviction for operating a motor vehicle while under the influence of an intoxicant (third

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

offense) in violation of WIS. STAT. § 346.63(1)(a). O'Connor challenges the traffic stop that led to his conviction, claiming that the State failed to prove reasonable suspicion that O'Connor was in violation of a traffic law. We disagree and affirm.

¶2 At a little after 11:00 p.m. in May 2011, a Sheboygan county sheriff's deputy stopped at an intersection noticed that the pickup truck opposite from him at the intersection had no visible front license plate. When the truck passed, heading north, the deputy turned around to follow it and make a traffic stop.

¶3 The deputy approached the car and identified the driver as O'Connor. The deputy informed O'Connor of the reason for the stop and asked whether he had a front license plate. During his conversation with O'Connor, the deputy smelled "the odor of intoxicant emitting from the vehicle" and saw that "the defendant's eyes were bloodshot and glossy." Shortly thereafter, the deputy arrested O'Connor and issued him citations for operating the vehicle while intoxicated and with a prohibited blood alcohol concentration, third offenses.

¶4 O'Connor challenged the traffic stop as an unreasonable search and seizure. He argued first that the deputy lacked reasonable suspicion for the stop because he merely had "a bare-bones suspicion that there might not have been a front license plate." Furthermore, even if the deputy did have reasonable suspicion that there was no license plate, O'Connor argued, he lacked probable cause to suspect violation of WIS. STAT. § 341.15 because not every single vehicle in Wisconsin is required to have a front plate. Under Wisconsin law, only vehicles that are issued two license plates are required to display both front and rear plates and, according to O'Connor, "there is absolutely no evidence in this record that

the Court can rely on to determine that Mr. O'Connor's truck was the type that would result in the issuance of two plates.”

¶5 O'Connor further argued that the deputy acted on a mistake of law, because he testified that the law requires two license plates—a front and a back—without acknowledging that there are exceptions. The circuit court rejected the defendant's view of the deputy's testimony:

I think that's straining the interpretation that one would normally attach to the officer's actions. If he knew that [O'Connor] isn't supposed to have [a front plate] and decided, well, we are going to stop him because he doesn't have one, I can buy into your argument. But that's a big leap from where we are here. Because as I understood the officer's testimony, it was his belief, and ... that the officer—that the defendant is required to have a front license plate.

On this basis, the court held, “the officer did have both a reasonable suspicion and probable cause to initiate the stop with Mr. O'Connor.” On appeal O'Connor presses the same arguments, that the deputy's testimony at the hearing was insufficient to establish that the deputy had probable cause or even a reasonable suspicion that O'Connor's truck was in violation of state law requiring vehicles issued two plates to display both plates.

¶6 Both the Fourth Amendment of the United States Constitution and article I, § 11 of the Wisconsin Constitution guarantee to all citizens the right to be free from unreasonable searches and seizures. It is well established that, consistent with these guarantees, “an officer may make an investigative stop if the officer ... reasonably suspects that a person is violating the non-criminal traffic laws.” *County of Jefferson v. Renz*, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999). Because an investigatory stop is a “seizure” within the meaning of the Constitution, a law enforcement officer, before stopping an individual, must

reasonably suspect that the individual is violating the law. *See Terry v. Ohio*, 392 U.S. 1, 20-22 (1968); *State v. Gammons*, 2001 WI App 36, ¶6, 241 Wis. 2d 296, 625 N.W.2d 623; WIS. STAT. § 968.24. Whether an investigatory stop was reasonable depends on “whether the officer’s action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.” *Terry*, 392 U.S. at 19-20.

¶7 Determining if there was reasonable suspicion to conduct a traffic stop is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. We apply a two-step standard of review to questions of constitutional fact. *State v. Williams*, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W. 2d 106. First, we review the circuit court’s findings of historical fact and uphold them unless they are clearly erroneous. *See State v. Martwick*, 2000 WI 5, ¶19, 231 Wis. 2d 801, 604 N.W.2d 552. Second, we review the determination of reasonable suspicion de novo. *See id.*

¶8 In O’Connor’s case, the suspicion that prompted the deputy to make an investigatory stop was a suspected violation of WIS. STAT. § 341.15. That statute provides that “[w]henver 2 registration plates are issued for a vehicle, one plate shall be attached to the front and one to the rear of the vehicle.” Sec. 341.15(1). Two registration plates are issued for any “automobile, motor truck, motor bus, school bus, motor home, or dual purpose motor home”—i.e., the great majority of passenger vehicles on our roads. *See* WIS. STAT. § 341.12(1) (listing vehicles for which two plates are issued); *see also* WIS. STAT. §§ 340.01(4) (defining “automobile”), 340.01(34) (defining “motor truck”). Registration plates “shall be so displayed that they can be readily and distinctly be seen and read.” Sec. 341.15(2). Any person operating a vehicle with its registration plate attached

“in an inconspicuous place so as to make it difficult to see and read the plate” may be required to forfeit up to \$200. Sec. 341.15(3)(b).

¶9 In this context, the testimony of an experienced deputy² that he believed the truck was in violation of the law requiring display of a front plate supported the inference that the deputy believed the pickup truck to be the sort of vehicle that Wisconsin law requires to have both front and back plates. The fact that the deputy did not specifically state that he was aware of exceptions to the two-plate rule does not undermine the State’s proof.³ As the circuit court noted, the deputy testified that he did not see a license plate in plain view on the front of the pickup truck—providing a reasonable suspicion warranting a brief traffic stop to investigate further. *See State v. Post*, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634 (explaining that an investigative traffic stop is permissible when “specific and articulable facts ... taken together with rational inferences from those facts, reasonably warrant” the intrusion).

¶10 It was O’Connor’s consumption of alcohol before driving that transformed the stop from one investigating why the officer did not see a front plate to one investigating whether O’Connor was safe to drive. The fact that the deputy did not also cite O’Connor for failure to display a front plate does not mean that he lacked reasonable suspicion for the initial stop.

² The deputy who stopped O’Connor had several years of law enforcement experience, significant training in Wisconsin traffic laws and enforcement, and estimated he had issued close to 5000 traffic citations in his career.

³ Thus, the case is not like *State v. Longcore*, 226 Wis. 2d 1, 8-9, 594 N.W.2d 412 (Ct. App. 1999), which stands for the proposition that a mistake of law, even one made in good faith, cannot support “reasonable suspicion” to warrant an investigatory stop. Here, that the officer did not note that the two-plate requirement has exceptions is not a mistake of law as it applies to automobiles and motor trucks.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

